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## REMARKS

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3       1. The Office Action of October 25, 2005 is hereby acknowledged. This  
4 Submission under 37 CFR 1.114 Amendment is being filed concurrently with a Request for  
5 Continuing Examination (RCE). The shortened statutory period of three (3) months time period  
6 for response to this Office Action expired on January 25, 2006. Concurrently with the filing of  
7 this Submission, the Applicant has requested a twoe-month extension of time and has paid the  
8 appropriate fee. Therefore, the deadline for filing the response is March 25, 2005. This  
9 Submission under 37 C.F.R. § 1.114 is being mailed by Express Mail, Mail Label No. EV  
10 699609025 US, addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450,  
11 Alexandria, Virginia 22313-1450 on March 21, 2006. Therefore, this Submission is timely filed.  
12 In the event that the Commissioner for Patents should determine that any additional extension of  
13 time is required for this Submission to be timely filed and an appropriate fee is due for that  
14 extension of time, then the Commissioner for Patents is hereby authorized to charge Deposit  
15 Account Number 18-2222 for such appropriate fee.

16

17       2. The original '157 Application had a total of 12 claims wherein 8 were  
18 independent claims. The '157 Application now has a total of 12 total claims wherein 8 are  
19 independent claims. Therefore, no additional fee is due. In the event that the Commissioner for  
20 Patents should determine that any additional fee is due, then the Commissioner for Patents is  
21 hereby authorized to charge Deposit Account Number 18-2222 for the appropriate fee.

22

23       3. The Applicant will address each of the Examiner's statements as set forth in the  
24 Office Action.

25           3.01 The Applicant apologizes to the Examiner for the typographical error which  
26 appeared on Page 10, Lines 20 and 21 of the previous response. The word was to be  
27 "respectfully", and not "disrespectfully". The Applicant apologizes for not catching this  
28 typographical error.

1           3.02 Under the heading "Claim Rejections - 35 U.S.C. 112" with respect to  
2 Claim 1 - 12, the words "blown up" have been deleted from each claim.

3           3.03 Under the heading "Claim Rejections - 35 U.S.C. 112" with respect to  
4 Claim 12, the word "slowly" has been deleted.

5           3.04 "Claim Rejection - 35 U.S.C. 103"

6           The following examines the "obviousness" standard with respect to the present invention.  
7 It shows that there are unique features of the present invention which are generally understood,  
8 but which are not found or taught in prior art.

9           It also shows that the prior art, though mentioning some of the features of the present  
10 invention, is insufficient to maintain a rejection based on obviousness due to the very broad and  
11 vast number of ingredients and permutations of those ingredients. In other words, which  
12 combination of the hundreds of suggested ingredients are to be used to formulate the perfected  
13 skin exfoliant is not obvious from the prior art. Supporting case law is also presented.

14           The Examiner continues to reject the '157 Application on the grounds that the Examiner  
15 believes that all the claims of invention are obvious based on a combination of two published  
16 patent applications and one issued patent, namely the Deckers et al. published Patent Application  
17 US 2002/0037303 A1 (hereafter "Deckers") in view of Stavroff et al., Patent 5,866,145  
18 (hereafter "Stavroff") and Schwartz Published Patent Application US 2002/0012697 A1  
19 (hereafter "Schwartz").

20           35 U.S.C. 103 - Obviousness Standard and the Prior Art Generally

21           Most, if not all, inventions are combinations and mostly of old elements. Richdel, Inc. v.  
22 Sunspool Corp., 714 F.2d 1573, 1579-80, 219 U.S.P.Q. (BNA) 8, 12 (Fed. Cir. 1983)

23           The fact that a claimed compound may be encompassed by a disclosed generic formula  
24 does not by itself render that compound obvious. *In re Jones*, 958 F.2d 347, 350, 21 U.S.P.Q.2D  
25 (BNA) 1941, 1943 (Fed. Cir. 1992) (rejecting Commissioner's argument that "regardless [] how  
26 broad, a disclosure of a chemical genus renders obvious any species that happens to fall within \  
27 it"). Jones involved an obviousness rejection of a claim to a specific compound, the

1 2-(2'-aminoethoxy)ethanol salt of 2-methoxy-3,6-dichlorobenzoic acid (dicamba), as obvious in  
2 view of, inter alia, a prior art reference disclosing a genus which admittedly encompassed the  
3 claimed salt. In Jones the Federal Circuit reversed the Board's rejection, reasoning that the prior  
4 art reference encompassed a "potentially infinite genus" of salts of dicamba and listed several  
5 such salts, but that it did not disclose or suggest the claimed salt. In re Baird, 16 F.3d 380, 381  
6 (Fed. Cir. 1994)

7 Although Deckers and Schwartz when combined do encompass the ingredients of in the  
8 present invention, it is similar to Jones in that the over 580 combined ingredients of Deckers and  
9 Schwartz, while not covering an entire genus, is so broad as to be unhelpful to the skilled  
10 artisan.

11 One analytical framework for determining obviousness was suggested in 365 F.2d at  
12 1020. "We think the proper way to apply the 103 obviousness test to a case like this is to first  
13 picture the inventor as working in his shop with the prior art references--which he is presumed to  
14 know--hanging on the walls around him. ... Looking around the walls, he would see Hellman's  
15 envelopes with holes in their flaps hung on a rod. He would then say to himself, 'Ha! I can punch  
16 holes in my bags and put a little rod (pin) through the holes. That will hold them! After filling  
17 the bags, I'll pull them off the pins as does Hellman. Scoring the flap should make tearing easier.'  
18 " 365 F.2d at 1020.

19 In the instant matter, the hypothetical "inventor" sitting in his workroom setting out to  
20 create an improved skin cleanser would have Deckers, Schwartz and Stavroff on the walls. (All  
21 of the ingredients of Stavroff are found in Schwartz and adds nothing except a new % of silicone  
22 oil and salt component.)

23 That being the case, the hypothetical inventor in an effort to create the new product  
24 would look at Deckers, Schwartz to gain an insight as to how to make an improved skin  
25 cleanser. The inventor would perhaps look at Deckers and see in excess of 480 listed ingredient  
26 that are therein mentioned. If the inventor checks the ingredients included by reference, the  
27 number of possible ingredients to chose from increases dramatically.

28 Assuming the inventor stays within the ingredients of the text itself, he would then have

1 to have some guidance from Deckers as to which ingredients he should select from to make the  
2 improved skin cleanser. However, there is no guidance. For example, some 58 plant oils are  
3 listed as being possible candidates for the emollient component. However, nowhere is it taught  
4 which has preferable properties for the task from others.

5 The inventor would look at the 480 ingredients listed on the wall of his shop for guidance  
6 and be absolutely bewildered as to which ones to combine, or not to combine to formulate the  
7 perfected skin cleanser.

8 Schwartz is similar but lists some 44 oils to use.

9 In other words what is obvious to use and combine and at what %'s does not become  
10 obvious until some experimentation and refinements are performed. That takes much time and  
11 effort and skill on the part of the inventor. To test each possible permutation of either the 58 or  
12 44 plant based oil ingredients listed would take a skilled artisan hundreds of years, to formulate,  
13 test and refine the perfected formula. What is being said is that the prior art is not helpful  
14 to the skilled artisan and thus obviousness is not present.

15 Another way to phrase it is whether the suggestion or motivation to make the claimed  
16 invention "leaps at a person of ordinary skill in the art from thorough inspection" of the complete  
17 prior art device. Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1090, 37 USPQ2d at 1241.

18 In the present invention the inventor in his shop can not "visually see" from the prior art  
19 which combination of ingredients and in what percentages would result in the improved formula.  
20 Such could only be "seen" after extensive experimentation and testing and reformulation using  
21 the inventor's skill. Certainly, which of the over 480 ingredients, and which combination of  
22 those ingredients can not "leap" at the hypothetical inventor, as to which ones would result in the  
23 vastly improved skin cleanser. In other words the present invention is similar to those dealing  
24 with hindsight. The hindsight results only after the inventor spends significant time and skill in  
25 reaching the perfected skin cleanser.

26 Put another way, the inventors of Deckers and Schwartz can not "protect" their patents  
27 from improvements and innovations simply because they suggest a myriad of other ingredients,  
28 and by simply mentioning them with the words "and mixtures thereof" with about 500 other

1 possible ingredients, defeat others from making any improvements in the field.

2       The genius of invention is often a combination of known elements that in hindsight seem  
3 preordained . Medtronic, Inc. v. Daig Corp., 611 F. Supp. 1498, 1534, 227 USPQ 509, 535 (D.  
4 Minn. 1985), aff'd, 789 F.2d 903, 229 USPQ 664 (Fed. Cir. 1986), cert. denied, 479 U.S. 931  
5 (1986) ("Hindsight ... is quite improper when resolving the question of obviousness. To use the  
6 patent in suit as a guide through the morass of prior art references, combining the right  
7 references in the right way to arrive at the result of the claims in suit is ... also quite improper.").

8       It can easily be argued that combining the over 480 ingredients of Deckers with the over  
9 103 ingredients of Schwartz creates a "morass" of possible combinations to select from.

10      "The existence of an enduring, unmet need is strong evidence that the invention is novel,  
11 not obvious, and not anticipated. If people are clamoring for a solution, and the best minds do  
12 not find it for years, that is practical evidence--the kind that can't be bought from a hired expert,  
13 the kind that does not depend on fallible memories or doubtful inferences--of the state of  
14 knowledge."

15 ATD Corp. v. Lydall, Inc., 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998)  
16 ("Determination of obviousness can not be based on the hindsight combination of components  
17 selectively culled from the prior art to fit the parameters of the patented invention."

18       Deckers lists in part the following:

19 almond (*Prunus dulcis*);  
20 anise (*Pimpinella anisum*);  
21 avocado (*Persea spp.*);  
22 beach nut (*Fagus sylvatica*);  
23 borage (also known as evening primrose) (*Borago officinalis*);  
24 Brazil nut (*Bertholletia excelsa*);  
25 candle nut (*Aleuritis tiglum*);  
26 carapa (*Carapa guineensis*);  
27 cashew nut (*Anacardium occidentale*);  
28 castor (*Ricinus communis*);

29       What the artisan would have to do is combine almond oil with anise oil and conduct  
30 human tests on the formula. That could take months to determine if the combination were of any  
31 value. The artisan would also have to vary the % of almond oil between let's say 1 and 99 % in  
32 varying degrees and likewise the anise oil in let's say 1 % increments and test the results.

1        The artisan would next have to combine almond oil with avocado oil, and repeat the test  
2 process and experiment while varying the %'s of each oil.

3        The artisan would next have to combine almond oil, anise oil and avocado oil, and repeat  
4 the test process and experiment while varying the %'s of each oil.

5        When each of the possible combinations are attempted, approximately  
6 1.80143985094819e+016 possible formulations result. This is based on combination theory  
7 using the following formula:

8

9

$$10 \sum \frac{n!}{k!(n-k)!} \text{ for } k = 1 \text{ to } k = 54 \text{ and where } n = 54.$$

11

12

13

14 Where n equals the number of oils to select from (54) and k equals the combination set. In other  
15 words the total number of possible combinations for 2 oils out of the 54 is

16  $\frac{54!}{2!(54-2)!} + \frac{54!}{3!(54-3)!} + \frac{54!}{4!(54-4)!} \dots$

17

18

19 resulting the 1.80143985094819e+016 when attempting each of the possible combinations for  
20 the 54 oils found in Deckers.

21 The total for Schwartz having 44 possible oils to combine is 17,592,186,044,370.

22  $\frac{44!}{2!(54-2)!} + \frac{44!}{3!(54-3)!} + \frac{44!}{4!(54-4)!} \dots$

23

24

25        The time to make and vary and test each of the possible formulations could not be done  
26 any skilled artisan within a lifetime. It would take millions upon millions of tests of each of the  
27 various combinations and %'s thereof. If each human test for each of the various formulas took  
28 3 months it would take thousands and thousands of years to complete the testing of the 58 oils -

1 and combinations thereof - to determine which combinations and %'s resulted in the ideal  
2 formulation. That simply does not give rise to obviousness.

3 Likewise, Schwartz suggests the possibility of a combination of some 44 oils [0132] but  
4 gives no guidance as to which ones would be preferable (or why they would be), and of greater  
5 difficulty, at which combinations of those oils are preferable, and of greater difficulty, how these  
6 should be combined with other ingredients of the present invention to formulate the ideal body  
7 cleansing scrub.

8 Like Deckers, to test, reformulate the possible permutations of the 44 suggested oils and  
9 variations of possible %'s of those oils with each combination, would require millions and  
10 millions of tests and thousands and thousands of years to test each of those possible formulations  
11 with human trials.

12 The Schwartz patent does not teach that safflower oil should be combined with any other  
13 oils. Further, Schwartz teaches using ethoxylated jojoba oil [0045]. Ethoxylation is a chemical  
14 process in which ethylene oxide is added to fatty acids in order to make them more soluble in  
15 water. There is thus a difference between the present invention and the Schwartz as the process  
16 of ethoxylation alters the properties of the jojoba oil.

17 What Deckers for its skin cream formulation teaches at [0265] is:

18 7 Keltrol 0.5%  
19 Panthenol 0.1%  
20 Allantoin 0.05%  
21 Glycerin 2.0%  
22 Dimethicone 1.0%  
23 Arlacet 165 2.5%  
24 Cetyl Alcohol 2.0% Finsolv TN 2.0%  
25 Permethyl 101A 2.0%  
26 Phenonip 1.0%  
27 Base Formulation C 50.0%  
safflower oil bodies 50.0%  
Glydant Plus 0.25%  
BHT 0.1%  
BHA 0.1%  
Keltrol 0.3%  
Glycerine 2.0%  
Arlacet 2.5%  
Water 35.85%  
Retinyl Palmitate 1.0%

28 There are not enough similarities between the suggest formulation and the present

1 invention to give rise to a suggestion of obviousness.  
2

3       The example of the inventor working in his shop with the prior art on the wall  
4 exemplifies what is being said. In that example, the inventor was creating a new and improved  
5 closing plastic bag. The prior art was something that could be visualized as far as its impact on  
6 improving the bag closing mechanism.

7       For example, in

8               "[I]t is impermissible to use the claimed invention as an instruction manual or  
9               'template' to piece together the teachings of the prior art so that the claimed  
10          invention is rendered obvious. ... This court has previously stated that '[o]ne  
11          cannot use hindsight reconstruction to pick and choose among isolated disclosures  
12          in the prior art to deprecate the claimed invention.' In re Fritch, 972 F.2d 1260,  
13          1266.

14       Because Deckers and Schwartz combine to teach in excess of 500 possible ingredients  
15      that are to be used in the improved skin cleanser, it is requiring the inventor to "pick and choose"  
16      among the disclosures of over 580 ingredients of the prior art.

17  
18       "Obvious to Try" Standard.

19       In the present invention, the rejection based on obviousness is similar to an 'obvious to  
20      try' approach, which the courts have generally rejected.

21       a. **Obviousness Not Present where inventor selects a particular configuration from  
22          a broad range of possibilities suggested by the prior art**

23       In a typical "obvious to try" situation, the inventor selects a particular configuration from  
24      a broad range of possibilities suggested by the prior art and discovers that the configuration  
25      achieves significant advantages nowhere suggested in the prior art. In such cases, it is clear that  
26      the result achieved must be considered as well as the actual physical modification.      Where  
27      such an approach is taken by the inventor, the obviousness is not present. See E.g. In re Fine,  
28      837 F.2d 1071, 1075, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988).

1        In the present invention, the configuration that achieve the perfected skin cleanser would,  
2 according to the obviousness standard applied in the rejection, be selected from around 480  
3 possible ingredients of Deckers and over 100 in Schwartz. Because the configuration suggested  
4 is so broad in nature it fails for obviousness in that the configuration is from such a "broad range  
5 of possibilities" and is not useful the skilled artisan.

6        **b. Obviousness Not Present where inventor has to vary all parameters or try each  
7 of numerous possible choices until one possibly arrived**

8        The admonition that "obvious to try" is not the standard under § 103 has been directed  
9 mainly at two kinds of error. In some cases, what would have been "obvious to try" would have  
10 been to vary all parameters or try each of numerous possible choices until one possibly arrived at  
11 a successful result, where the prior art gave either no indication of which parameters were  
12 critical or no direction as to which of many possible choices is likely to be successful. E.g., In re  
13 Geiger, 815 F.2d at 688, 2 USPQ2d at 1278; Novo Industri A/S v. Travenol Laboratories, Inc.,  
14 677 F.2d 1202, 1208, 215 USPQ 412, 417 (7th Cir. 1982); In re Yates, 663 F.2d 1054, 1057, 211  
15 USPQ 1149, 1151 (CCPA 1981); In re Antonie, 559 F.2d at 621, 195 USPQ at 8-9. In others,  
16 what was "obvious to try" was to explore a new technology or general approach that seemed to  
17 be a promising field of experimentation, where the prior art gave only general guidance as to the  
18 particular form of the claimed invention or how to achieve it. In re Dow Chemical Co., 837 F.2d  
19 469, 473, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988); Hybritech, Inc. v. Monoclonal Antibodies,  
20 Inc., 802 F.2d 1367, 1380, 231 USPQ 81, 90-91 (Fed. Cir. 1986), cert. denied, 480 U.S. 947, 107  
21 S. Ct. 1606, 94 L. Ed. 2d 792 (1987); In re Tomlinson, 53 C.C.P.A. 1421, 363 F.2d 928, 931,  
22 150 USPQ 623, 626 (CCPA 1966). See In re O'Farrell, 853 F.2d 894, 903, 7 USPQ2d 1673,  
23 1680-81 (Fed. Cir. 1988);

24        Where the prior art suggests that the solution may reside in a limited number of possible  
25 permutations then obviousness is generally found. The solution would usually be obvious even  
26 though the hypothetical mechanic would have to try several of the permutations. See, e.g.,  
27 Mandel Bros. v. Wallace, 335 U.S. 291, 79 USPQ 20 (1948); In re Kulling, 897 F.2d 1147, 1149,  
28 14 USPQ2d 1056, 1058 (Fed. Cir. 1990).

1       The hypothetical inventor must vary over 500 different parameters from the prior art, and  
2 must also attempt to select from a very broad range of permutations of those over 500  
3 ingredients. That results in millions of combination to test and chose from. The number of  
4 combinations of the some 500 possible ingredients is in the millions and millions range, which is  
5 much larger than "several" as cited by the case law as the standard guidepost.

6       Further, because the only way to determine the ideal formulation is by experimentation  
7 and testing, the ideal formulation can not be rejected due to "hindsight" where that ideal result  
8 came about after extensive work, testing and refinement.

9       Additionally, the present invention makes novel use of salts and vitamins as a preserving  
10 agent and has taken substantial testing and creativity to arrive at the present invention for an  
11 improved skin cleansing product which suggestions are not found in the prior art.

12      For these reasons, it is submitted that while the constituents of the present invention are  
13 mentioned in Deckers , Stavroff and Schwartz they do not arise to being obvious. The present  
14 invention is asked not to be rejected based on the prior art of Deckers, Schwartz and Stavroff,  
15 and that it be reevaluated for patentability based on the arguments and information provided.

16                    3.05 Novel Use of Dead Sea Salt as a Preserving Agent

17      The claims of the '157 Application have now been modified to highlight the novel  
18 feature not found in prior art, whereby the present invention uses Dead Sea Salt in quantities  
19 sufficient to act as a preservative agent.

20      Regarding this feature, any commercial skin cleansing compound consisting in part of  
21 natural plant based oils, as in the present invention, is going to need a preserving agent.  
22 Schwartz makes it optional but that is commercially unrealistic in practice.

23      Schwartz at [0049] teaches the preservative would require the use of propylene glycol,  
24 phenoxyethanol, chlorphenesin and methylparaben. These are, however, harmful to the skin,  
25 and inclusion in a skin exfoliant of the present invention would only work to defeat the purpose  
26 of the present invention.

27      Schwartz for example teaches the use of between 5% [63] and 10 % [66] Dead Sea Salt.  
28 Such a quantity is insufficient to act as a preservative of the compound to give it any meaningful

1 shelf life.

2 Stavroff Teaches using Dead Sea Salt at a 50 - 80% concentration. [column 2:13-15]  
3 While this is sufficient act as a preservative, a preservative is not necessary to the successful  
4 embodiment as the remaining composition is silicone based oil, which needs no preservative.

5 Deckers does not teach the need for Dead Sea Salt and instead uses synthetic  
6 preservatives.

7 The use of water is taught in Deckers [0092] (1% - 99%) and in Schwartz [0063] (5%). It  
8 is well known generally that water serves as an incubator for bacteria and mold.

9 Deckers suggests over 40 different uses ranging from a mayonnaise and mustard spread  
10 [0104], to prescription drugs [0105] to sun screen products [0112]. Schwartz is narrower,  
11 suggesting a use particularly for "itching and psoriasis", but also can be used as a mouthwash  
12 [67], as a shampoo for humans [68] and for animals [68], to relieve sinus congestion [77] for  
13 arthritis, and dogs and horses [75] and as an inhalant for the lungs [76], for toothpaste [0106], to  
14 cure damage from x-ray radiation [0106] and aging of the skin [0106].

15 The principal (and only ) purpose of the present invention is for use on the human body  
16 to exfoliate and treat the skin. The benefits and need for such a product are known in the art.  
17 The Deckers and Schwartz references are broad in nature and seek to be used for a wide variety  
18 of products and purposes.

19 The present invention has been formulated and refined for its specific purpose and has  
20 done so to eliminate the need for harmful synthetic preservatives. It has also been formulated to  
21 eliminate the need for water which also promotes the need for synthetic preservatives.

22 One of the suggested preservatives of the Schwartz prior art is **Propylene Glycol**. [0051]  
23 Propylene Glycol is a known skin and eye irritant. See for example  
24 [http://www.safety.duke.edu/msds/ProdPharmacy/Polyethylene\\_Glycol\\_Gut\\_Lavage.pdf](http://www.safety.duke.edu/msds/ProdPharmacy/Polyethylene_Glycol_Gut_Lavage.pdf).

25 Another ingredient, **phenoxyethanol** [0051], suggested by the referenced art, is also  
26 considered a skin irritant. See for example, [http://www.theecologist.org/archive\\_detail.asp?  
27 content\\_id=419](http://www.theecologist.org/archive_detail.asp?content_id=419). It is also listed as causing allergic reactions. [http://www.luxurysoap.co.za/  
28 unnatural\\_ing.htm](http://www.luxurysoap.co.za/unnatural_ing.htm).

1           **Chlorphenesin [0051]** is an antifungal agent. It too can cause severe complications to

2  
3           the skin. For example, this substance is listed by the NIH as having caused at least two known  
4           cases of dermatitis. See [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd= Retrieve  
&db=pubmed&dopt=Abstract&list\\_uids=15701134&query\\_hl=1&itool=pubmed\\_docsum](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=15701134&query_hl=1&itool=pubmed_docsum).

5  
6           **Methylparaben [0051]** is also considered a skin irritant. See  
7           <http://www.naturalfoodsmerchandiser.com/NH/ASP/strArticleID/147/strSite/FFNSite/articleDisp.asp>, See also <http://www.beauty.net.co.za/default.asp?id=366>. It has also been associated  
8           with breast cancer. See <http://encyclopedia.thefreedictionary.com/Methylparaben>.

9  
10          The present invention which is a skin intensive application with the goal of maximum  
11          benefit to the skin without irritation or possibilities of undesirable side effects, avoids such  
12          ingredients as non-ideal and counter to the goal of the present invention.

13          While the exact harmful effects of these and other ingredients may still be in question,  
14          the present inventor has spent years of study and experimentation and come up with an improved  
15          composition for a skin care cleanser which does not use synthetic preservatives that can cause  
16          harm and damage over an extended period of time.

17          The present invention - through years of testing and refinement - has been formulated  
18          without the need for water. This further helps minimize the need for powerful and harmful  
19          synthetic preservatives such as those suggested by Deckers and Schwartz. In fact both Deckers  
20          and Schwartz employ water in their formulations.

21          Novel Use of Vitamin C, E as a Preserving Agent

22          Likewise, the use of Vitamin C and E as preservatives in the present invention is novel  
23          and not taught in the prior art. Vitamin C and E act as natural antioxidants and in the present  
24          invention are found in sufficient quantities to further act as preservatives.

25          With respect to obviousness, the use of salt and Vitamin C and E to assist as preservative  
26          agents is not taught or suggested in the prior art. This is an example of how one skilled in the art  
27          has taken a commonly understood principle of biology and chemistry and applied it to solve a  
28          specific problem in the field of the art. The same can be said of the removal of water from the

1 formulation to extend the shelf life of the product without synthetic preservatives which harm the  
2 skin.

3 In fact nowhere do Deckers and Schwartz teach that removal of water from the  
4 formulation would extend the shelf life, i.e. no motivation is given from the prior art. Each in  
5 fact teaches away from the removal of water and actually teach that it should be used.

6 3.05 Additional Features Concerning Novel Use of Dead Sea Salt as a Preserving  
7 Agent and Novel Use of Vitamin C, E as a Preserving Agent

8 Further, based upon scientific principles as highlighted in web pages discussed in the  
9 following section, it is respectfully submitted that the prior art cited by the Examiner requires the  
10 use of preservatives in order to make the product have a reasonable shelf life. It is important to  
11 note that in the present invention, the requirement to use preservatives is not included in the  
12 claims and this omission is in fact an innovation over the prior art and makes the claims of  
13 invention allowable in addition to all of the other arguments set forth in Section 3.04 above.

14 The Applicant will now present arguments as to why the present invention does not  
15 require the use of preserving agents which would be harmful to a person's skin because of the  
16 use of the amount of dead sea salt which functions as a preserving agent, and also the use of  
17 Vitamins C and E which function as a preserving agent.

18  
19  
20 4. The uniqueness of the present '157 invention is supported by fundamental Supreme  
21 Court cases such as Great Atlantic and Pacific Tea Co. v. Supermarket Eq. Corp., 340 U.S. 147,  
22 150-51, 87 USPQ 303 (1950) which held that a new and surprising result would merit a  
23 patentable invention. The inventor of the invention in the present '157 Application has created a  
24 new and surprising result and a synergistic effect of arriving at a combination of elements when  
25 combined with the percentages and also specific parameters as set forth in Independent Claims 1,  
26 3, 5 and 7 and when prepared in the method as set forth in detail in Independent Claims 9, 10, 11  
27 and 12 create the new and surprising result of a salt sorbet foam to achieve the result of a foam  
28 which creates a deep cleansing action to cleanse the skin pores and exfoliate the skin in a manner

1 which does not damage the skin. It is respectfully submitted that this is not obvious and can  
2 qualify under Great Atlantic and Pacific Tea Co. as being sufficiently unexpected as to qualify  
3 as being a new and unique creation.

4

5 5. Therefore, it is respectfully submitted that the present invention with the claims as  
6 now amended is in condition for allowance and issuance of a Notice of Allowance is respectfully  
7 solicited.

8 Respectfully submitted,

9

10 Date: March 21, 2006

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